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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

COMMENTS IN OPPOSITION TO
A STAY OF THE UNIVERSAL SERVICE ORDER PENDING JUDICIAL REVIEW

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I. INTRODUCTION AND SUMMARY

The Education and Library Networks Coalition (hereinafter "EdLiNC") submits these comments in response to a joint petition for a stay pending judicial review of the FCC's Universal Service Order¹ ("the Order") filed by Southwestern Bell Co. and Pacific Bell/Nevada Bell (hereinafter "Petitioners") on July 3, 1997.

EdLiNC is a coalition of over thirty major national organizations representing both public and private schools and libraries, as well as the children and lifelong learners that they serve.² Its members were strong advocates of the Snowe-Rockefeller-Exon- Kerrey Amendment ("SREK") to the 1996 Telecommunications Act ("Act") which directed the FCC to establish affordable telecommunications rates for schools and libraries. EdLiNC was also an active party to the Universal Service rule making process before the Federal-State Joint Board and the FCC which resulted in the Report and Order on Universal Service at issue here.

EdLiNC is vehemently opposed to Petitioners' request for a stay. As we set out more fully below, a stay of the universal service order and, in particular, the \$2.25 billion program to provide deeply discounted telecommunications services to schools and libraries is contrary to the public interest and will cause irreparable harm to schools, libraries, and the communities that depend on their services. By contrast, EdLiNC finds Petitioners' claims of irreparable harm to be without merit.

EdLiNC is highly skeptical of the Petitioners' claims and believe it unlikely that they will

¹Federal-State Joint Board on Universal Service. CC Docket No. 96-45. Report and Order 97-157 (released May 8, 1997).

² A list of member organizations is attached as Appendix A.

prevail on the merits in their challenge to the scope of the universal service program for schools and libraries. Their claims are neither new nor novel. They received a searching review before the FCC during an extensive rule making process, which provided five separate opportunities for formal comment and produced over 55,000 pages of commentary and thousands of *ex parte* communications.³ For all of these reasons, EdLiNC asserts that Petitioners are not entitled to a stay under the four part test established in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) as modified in *Washington Metropolitan Area Transit Comm'n v. Holiday Tours*, 559 F.2d 841, 843 (D.C. Cir. 1977).

II. A DELAY IN IMPLEMENTING THE SCHOOL AND LIBRARY UNIVERSAL SERVICE ORDER IS NOT IN THE PUBLIC INTEREST.

EdLiNC strenuously objects to Petitioners' assertion that a stay would serve the public interest because it will discourage schools and libraries from unnecessarily expending resources and making investments that would be wasted if the Universal Service program were ultimately struck down. Contrary to Petitioners' assertions, the public interest lies in implementing universal service in a timely manner, not in planning for its demise. It is clear from the legislative history of SREK that Congress believed bringing advanced telecommunications services to schools and libraries was an *urgent* national priority. As a principal sponsor, Senator Olympia Snowe, explained:

Universal service has been a fundamental part of our

³ EdLiNC has submitted comments to the Joint Board and the FCC during the rule making process which addressed the claims in the SBC lawsuit related to Universal Service for schools and libraries.

telecommunication policy, and rightly continues to be We extended the provisions to include schools, [and] libraries . . . because we think it is in the public interest. It is in our national interest. . . . If we do not guarantee some affordable access to telecommunications services in rural schools, [and] libraries, . . . where are they going to be tomorrow? Where will our Nation be? It is in our national interest to ensure that these areas are part of the information superhighway. 141 *Cong. Rec.* S7977, S7990 (daily ed. June 8, 1995).

In the same debate, co-sponsor Senator Jay Rockefeller made clear that the public interest required an immediate response: "Every 18 months the capacity of computers . . . double[s] . . . [W]hat we are talking about now is going to be far greater in the future. Therefore, what we deprive people of now will hurt much more in the future than we can possibly imagine." 141 *Cong. Rec.* at S7980. From the record, it is apparent that SREK was plainly a remedial measure, and that Congress intended and expected that it be implemented promptly.

As Congress also made clear during its debate on the Act, SREK was introduced in an effort to narrow the growing gap between information haves and have nots in this country. Its sponsors targeted schools and libraries for discounts on telecommunications services because study after study has indicated that these core civic institutions are far behind other parts of society in incorporating advanced technology. As Senator Rockefeller pointed out in debate:

Most classrooms in America still look the same today as they did 60 years ago when we wrote the first telecommunications act. . . . Yet, with the tools of our modern-day office, how can we possibly expect our children to become productive, informed, innovative contributors to the economy out there, beyond the schools, when they learn with a blackboard and they do not have a computer? It will not work. 141 *Cong. Rec.* at S7981.

Any substantial delay in implementing SREK will not only cause the access to technology gap to widen, but will deny yet another generation of students the ability to acquire critical

employment skills. Senator Rockefeller underscored this when he stated on the Senate floor, "If our children are to use technology thoughtfully and appropriately, they must have access to it in their formative years. . . . [SREK] ensures that our children will become productive members in a world that is growing more technological and competitive every single hour." 141 *Cong. Rec.* at S7981-82. EdLiNC is gravely concerned that the grant of a stay would have a profound impact on the lives and prospects of today's students and all life-long learners.

While Petitioners are correct that no specific deadline was established in the Act for implementation of Universal Service, both the legislative history of SREK and other provisions of the Telecommunications Act emphasize rapid deployment of telecommunications services.⁴ In particular, Sec. 706 (b) of the Act specifically requires the Commission to "within 30 months after the date of enactment of this Act, . . . initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including . . . *schools and classrooms*)." *Sen. Conf. Rep. No. 104-230*, at 102 (1996) (emphasis added). If the Commission finds that deployment is not proceeding "in a reasonable and timely fashion," it is mandated "to take immediate action to accelerate deployment." *Id.* at 210. The mandate of Sec. 706(b) is entirely inconsistent with Petitioners' request for a stay of universal service. *See, Sen. Conf. Rep. No. 104-230* at 210 (1996). Furthermore, the extraordinarily strict deadlines set by Congress for the rule making on Universal Service evince a clear intent to implement the program in a timely

⁴ Indeed, a primary purpose of the 1996 Telecommunications Act was to "encourage the rapid deployment of the new telecommunications technology." *H.R. Rept. No. 104-204*, at 47 (1996). Further, the Joint Explanatory Statement of the Conference Committee stated that the purpose of this bill was to establish a "national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information services *to all Americans*." *Id.* at 43 (emphasis added).

manner. Both the Federal-State Joint Universal Service Board and the FCC have exhaustively reviewed Congress' mandate and found timely implementation of Universal Service to be in the public interest. Granting a stay would thwart Congress' intent and undermine the strong public interest in bringing new information technologies to our nation's schoolchildren. As Senator Kerrey put it, "if you leave the status quo in place, these schools are going to get further and further behind. That really is a given. It is not going to go away." 141 *Cong. Rec.* at S7985.

III. SCHOOLS AND LIBRARIES AND THE COMMUNITIES THEY SERVE WILL BE IRREPARABLY HARMED BY A DELAY IN IMPLEMENTATION OF UNIVERSAL SERVICE.

Petitioners assert that no one will be harmed by a stay. Indeed, they claim further that a stay may actually benefit schools and libraries because it will preclude those entities from entering into long-term contracts for the telecommunications services that they would be unable to pay for if a court strikes down the Universal Service discount program. Petitioners even go so far as to suggest that without a stay, "it will be next to impossible to 'unring the bell.'" Joint Petition for Stay Pending Judicial Review at 32, *CC Docket No. 96-45*, filed July 3, 1997. This assertion entirely misses the point. The bell rang for schools and libraries long ago when Congress enacted SREK as part of the Telecommunications Act. Since then, schools and libraries have expended considerable resources in anticipation of the SREK program's commencement on January 1, 1998. Any additional delay in starting this program would irreparably harm those efforts.

From the grassroots to the highest levels of each state and the federal government, examples abound of extensive preparation and significant resource commitments in anticipation

of the SREK program. Much time, money and effort has been expended to inform schools and libraries about this program and how to participate in it. Shortly after the FCC's approval of the Order, a PBS-sponsored and EdLiNC- and US Department of Education- supported video conference, entitled "Maximizing your E-rate," delivered the latest information on implementation to an estimated 20,000 educators gathered at over 1,100 sites. Immediately after approval of the Order, EdLiNC and its membership prepared and distributed at a significant cost over 30,000 copies of a special report on the Universal Service program. The Department of Education distributed a similar mailing to an additional 15,000 education representatives. EdLiNC members have also held meetings nationwide to explain the program's requirements to school officials and have been part of a working group with the U.S. Department of Education that has been regularly meeting to make recommendations to the FCC on issues pertaining to implementation of the Order. Throughout this summer, the U.S. Department of Education and the FCC have been disseminating information on the Order to schools and libraries across the country.⁵ Members of EdLiNC and the US Department of Education have also been involved in efforts at mutual education between the education and library communities, on the one hand, and the public utilities commissions on the other.⁶ EdLiNC and the Department of Education also have additional, nationwide efforts that will be taking place this fall as additional information

⁵For example, the Department of Education is having representatives from its Regional Technology Education Consortia (RTECs) come to Washington for a training session on the implementation of the Order. These RTEC representatives will be working directly with schools across the country.

⁶These efforts include both numerous informal conversations with Commissioners and staff as well as planned presentations at the NARUC Summer Meeting in San Francisco on July 21, 1997.

and materials become available.

Since receiving notice of the SREK program, state departments of education, schools and libraries at all levels have been preparing to apply to the program. To satisfy the Order's requirements for participation in the program, many communities have developed or updated their technology plans and are undertaking time-consuming technology inventories. A number of local and state governmental entities have already made the necessary budgetary commitments to support additional hardware and training as well as ongoing telecommunications costs. Finally, to complement the new telecommunications services that they expect to purchase with the assistance of the SREK program, a multitude of school districts and libraries *have already purchased* hardware and taken steps to integrate the new technology into the curriculum.

The following are just a few examples of the substantial preparatory efforts already underway across the country at the state level:

- In Tennessee, the State Department of Education estimates that it is spending *\$1 million per month* on implementing plans and services related to the SREK program. The governor has committed to increasing the amount of time that students use the Internet from 30 minutes per student per week to 3 hours per student per week. The state Department of Education has also scheduled three regional meetings to discuss how to apply to the Universal Service Fund, how to best maximize the funds, and how to assist the coordinators with drawing up required technology plans. Every school district's technology coordinator will attend one of these meetings.
- In West Virginia, the state Department of Education has already begun spending the *\$60 million* the state legislature appropriated for implementation of the Universal Service discount program. From this appropriation, the state DOE has bought hardware and curriculum software.
- In New Mexico, under the leadership of the New Mexico Council on Technology, a broadly representative group formed by the state legislature, the State Department of Education, the Legislative Education Study Committee, private schools, teacher unions, state libraries, the Library Association, the Chief Information Officer in the Governor's

Office, school district representatives, National Laboratories in New Mexico, and others have organized into a coalition to help implement the goals of SREK. The State Department of Education has created a communication plan regarding the Universal Service discount program, and it has hosted meetings and workshops and initiated two mass mailings as part of this plan. The Council on Technology in Education is also working with EdLiNC New Mexico and the local phone companies to sponsor a statewide work session/conference about the E-rate in September. The total budget for the session is about \$350,000.

State education agencies and libraries⁷ from across the country report similar expenditures of time and resources.

In conjunction with these efforts, state Public Utility Commissions have also moved expeditiously to take action so that the Universal Service discounts will be available in each state by January 1, 1998. Approximately two dozen state public utility commissions have adopted the federal discount matrix for intrastate services or have opened dockets to address the issue. Utah, already making great strides to prepare for the start of this program, had its State Division of Public Utilities review and adopt the Order less than 40 days after the FCC approved it. In Michigan, where legislative approval was required, the state legislature recently adopted legislation granting their public service commission the power to opt into the federal discount matrix. In many states, schools and libraries have been active participants in those proceedings and have filed comments or testified in support of the Universal Service Order.

A stay of the implementation of Universal Service would cause irreparable harm to the recipients of the telecommunications discounts and the millions of school children and lifelong learners who rely on their services. Moreover, most schools and libraries -- to the extent they now have any telecommunications services -- would be forced to continue paying steep

⁷ See, Comments in Opposition to the Petition for Stay filed by the American Library Association, *CC Docket No. 96-45*, filed July 18, 1997.

commercial rates for those services. A stay of Universal Service would freeze the status quo and work real harm on schools and libraries that have anticipated relief from this burden for almost two years. Additionally, if the program is stayed, the considerable time and financial resources expended thus far to prepare for implementation of Universal Service would be lost and may be unrecoverable.

Finally, a delay in implementation would bring a halt to the implementation schedule established by the FCC and eliminate any possibility that the program could begin in the foreseeable future. Prior to beginning this program formally, the FCC must complete the Order's reconsideration process, authorize a universal service fund administrator to begin work, put in place application forms and guidelines, and establish procedures for advertising bids. A stay would set-back all of these efforts by months if not years, possibly pushing meaningful implementation of this program into the next century, and thwarting the plain intent of Congress. In sum, for Universal Service, implementation delayed may indeed be implementation denied.

IV. PETITIONERS' CLAIM OF IRREPARABLE HARM IS WITHOUT MERIT.

Petitioners claim that implementation of the Universal Service program will result in a loss, *inter alia*, of competitiveness and customer goodwill. The heart of their complaint is that once money is required to be collected from the telecommunications carriers and distributed to schools and libraries pursuant to the Universal Service order, Petitioners' obligations as LEC's will put them at a competitive disadvantage with respect to other service providers and send their customers fleeing. But no funds have or will be collected or distributed for Universal Service until January 1998. Moreover, Petitioners have presented no evidence that

non-telecommunications providers are prepared to compete in Petitioners' service area to provide telecommunications services.

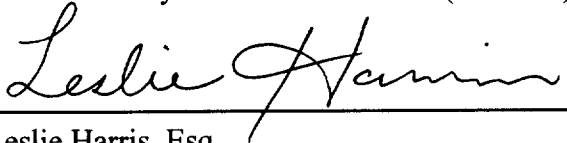
Furthermore, Petitioners are not in a unique position with respect to their prospective obligations under Universal Service. Yet, no other similarly situated incumbent LEC has sought a stay of the order or claimed that implementation of universal service would cause irreparable harm. Certainly, if Petitioners' fears of declining customer goodwill and substantial customer defections were well-founded, every other local service provider would have joined the petition to stay universal service implementation. As it is, the silence of these LECs speaks volumes about the merits of Petitioners' claims.

V. CONCLUSION

For all of the foregoing reasons, EdLiNC objects to Petitioners' request for a stay pending judicial review of the FCC's Universal Service Order. We are convinced that granting a stay would not be in the public interest, that it would not cause Petitioners irreparable harm, and that Petitioners are unlikely to be successful on the merits in federal court. In addition, EdLiNC asserts that the grant of a stay would do irreparable harm to the state, regional, local and grassroots implementation efforts already well underway, and to the children and lifelong learners who are the intended beneficiaries of the Universal Service program.

Respectfully submitted,

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Appendix A: Members of the Education and Library Networks Coalition

The Education and Libraries Networks Coalition (EdLiNC) was formed to represent the viewpoint of schools and libraries in the FCC proceedings dealing with the implementation of the Telecommunications Act of 1996. The Coalition seeks to expand the use of educational technologies in schools and libraries by making sure that these entities are given the affordable rate which is guaranteed to them in Universal Service Provisions of the Act. In the initial Request for Comments and Reply Comments filed in CC 96-45, EdLiNC filed as NSBA et al. All of EdLiNC's comments are available online (<http://www.itc.org/edlinc>).

The members of the Coalition are:

- Alliance for Community Media
- American Association for Adult and Continuing Education
- American Association of Educational Service Agencies
- American Association of School Administrators
- American Federation of Teachers
- American Library Association
- American Psychological Association
- Association for Education Communications and Technology
- Association for Supervision and Curriculum Development
- Association for the Advancement of Computing in Education
- Center for Media Education
- Consortium for School Networking
- Council for American Private Education
- Council for Educational Development and Research
- Council of Chief State School Officers
- Education Legislative Services, Inc.
- Educational Testing Service
- Federation of Behavioral Psychological and Cognitive Sciences
- Global Village Schools Institute
- International Society for Telecommunications in Education
- Lutheran Church -- Missouri Synod
- International Telecomputing Consortium
- National Association of Counties
- National Association of Elementary School Principals
- National Association of Independent Schools
- National Association of Secondary School Principals
- National Association of State Boards of Education
- National Association of Student Financial Aid Administrators
- National Catholic Educational Association
- National Education Association
- National Grange

National Rural Education Association
National Rural Electric Cooperative Association
National School Boards Association
Organizations Concerned about Rural Education
People for the American Way Action Fund
United States Catholic Conference
United States Distance Learning Association